

STATE OF MICHIGAN
COURT OF APPEALS

BEVERLY MARTIN,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant,

and

DETROIT PUBLIC SCHOOLS and DETROIT
PUBLIC SCHOOLS BOARD OF EDUCATION,

Defendants-Appellees.

UNPUBLISHED
February 28, 2008

No. 275893
Wayne Circuit Court
LC No. 06-600550-NO

Before: Whitbeck, P.J. and Jansen and Davis, JJ.

PER CURIAM.

Plaintiff Beverly Martin appeals as of right from the trial court's order granting defendants'¹ motion for summary disposition on the basis of governmental immunity. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

In early February 2004, Martin was exiting Northwestern High School after dropping her son for basketball practice when she slipped and fell on ice outside the school building. Martin suffered a serious injury to her right ankle.

Martin filed suit against defendants, alleging that a building defect caused the accumulation of ice on the walkway outside the school. Martin claimed that water dripping from

¹ As used herein, the term "defendants" will refer to Detroit Public Schools and Detroit Public Schools Board of Education, unless otherwise specified. Defendant City of Detroit was dismissed from this case and is not a party to this appeal.

an overhang created the patch of ice on which she slipped and fell. Martin also alleged that poor lighting in the area reduced her visibility.

Defendants moved for summary disposition, arguing that governmental immunity barred liability and that no exception applied. Specifically, defendants contended that Northwestern High School was not a public building, and therefore, Martin's action did not fall within the public building exception to governmental immunity. Defendants also claimed that, even assuming the high school was open to the public, Martin could not prove that her fall resulted from a design defect of the building. Defendants further claimed that they did not have notice of a dangerous or defective condition on the property.

After a hearing on the motion, the trial court granted summary disposition in defendants' favor, concluding that Martin failed to present sufficient evidence of a building defect that caused her injury. Accordingly, the trial court entered an order dismissing Martin's cause of action. Martin now appeals.

II. The Public Building Exception To Governmental Immunity

A. Standard Of Review

Martin argues that the trial court erred in granting defendants' motion for summary disposition under MCR 2.116(C)(7) because her claim does fall within the public building exception to governmental immunity. We review de novo a trial court's decision on a summary disposition motion.² To survive a motion for summary disposition under MCR 2.116(C)(7) based on governmental immunity, a plaintiff must allege facts to justify the application of an exception to governmental immunity.³ In reviewing a decision on such a motion, we must consider all of the parties' documentary evidence and accept as true the contents of the complaint, unless affidavits or other suitable documents specifically contradict the complaint.⁴

B. Legal Standards

Pursuant to MCL 691.1407(1), a governmental agency is generally immune from tort liability when it is engaged in the exercise or discharge of a governmental function. However, MCL 691.1406 provides for the public building exception to governmental immunity. To prove the applicability of the public building exception, a plaintiff must demonstrate that (1) a governmental agency is involved, (2) the public building at issue is open for use by members of the public, (3) a dangerous or defective condition of the public building itself exists, (4) the governmental agency possessed actual or constructive knowledge of the alleged defect, and (5) the governmental agency failed to remedy the allegedly defective condition following a

² *Tillman v Great Lakes Truck Ctr, Inc*, 277 Mich App 47, 48; 742 NW2d 622 (2007).

³ *Fane v Detroit Library Comm*, 465 Mich 68, 74; 631 NW2d 678 (2001).

⁴ *Id.*

reasonable amount of time.⁵ MCL 691.1407 grants broad immunity, and the public building exception under MCL 691.1406 is to be narrowly construed.⁶

C. Design Defects

In *Renny*, the Michigan Supreme Court held that design defect claims are not cognizable under the public building exception to governmental immunity.⁷ There, the plaintiff slipped on a patch of snow and ice on the walkway outside of the defendant's rest area and suffered serious injuries.⁸ The plaintiff sued, alleging that a defective condition of the rest area building caused her injuries.⁹ The plaintiff argued that the defendant failed to install and maintain gutters and downspouts around the roof of the building to redirect the snow and ice that melted from the roof away from the walkway.¹⁰ The Court of Claims granted the defendant's motion for summary disposition on the basis of governmental immunity.¹¹ This Court reversed that order and held that the plaintiff's claim was actionable as a design defect claim under the public building exception to immunity and that the plaintiff's injury was directly attributable to a dangerous or defective condition of the building itself although the dangerous condition existed outside the building.¹²

Subsequently, the Supreme Court reviewed the language of the public building exception and concluded that the language "refers only to the governmental agency's duty to 'repair and maintain' the public building," not to its duty to "design or redesign the public building in a particular manner."¹³ The Court noted that "the Legislature's sole use of 'repair and maintain' unambiguously indicates that it did not intend to include design defect claims within the scope of the public building exception."¹⁴ Moreover, the Court reasoned that "a narrowly tailored duty of repair and maintenance is entirely consistent with the government's interest in limiting its liability."¹⁵ Accordingly, the Supreme Court reversed this Court's holding that design defects are actionable under the public building exception and remanded the case for further proceedings

⁵ *Renny v Dep't of Transportation*, 478 Mich 490, 495-496; 734 NW2d 518 (2007).

⁶ *De Sanchez v Dep't of Mental Health*, 467 Mich 231, 237; 651 NW2d 59 (2002).

⁷ *Renny*, *supra* at 507.

⁸ *Id.* at 493.

⁹ *Id.*

¹⁰ *Id.* at 493-494.

¹¹ *Id.* at 494.

¹² *Id.*

¹³ *Id.* at 500, 507.

¹⁴ *Id.* at 501.

¹⁵ *Id.* at 501 n 28.

on the plaintiff's alternate argument that the defendant's failure to maintain gutters around the building caused the defective condition.¹⁶

Here, Martin alleged a dangerous or defective condition of defendants' high school building caused her injury. She argued that the absence of a gutter for the exit door overhang allowed an unnatural accumulation of ice on the walkway in front of the building and created a dangerous condition for the public. Because a design defect claim is not within the scope of the public building exception,¹⁷ we conclude that governmental immunity bars Martin's claim premised on a design defect of the building. We further conclude that, unlike the plaintiff in *Renny*, the record does not support Martin's alternative argument of improper maintenance of a public building. Accordingly, the trial court did not err in granting defendants' motion for summary disposition and dismissing Martin's case.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis

¹⁶ *Id.* at 506-507.

¹⁷ See *id.* at 506-507.